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OFFICE OF PETITIONS

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901 New York Avenue, NW
Washington DC 20001-4413

In re Application of
Rosen et al.
Application No. 09/832,929
Patent No. 6,926,898
Filed: Attorney Docket No 6832.0013

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: DECISION GRANTING PETITION
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This decision is in response to Applicants' "APPLICATION FOR PATENT TERM ADJUSTMENT under (37 CFR 1.705(b))" filed on August 20, 2004 and "NOTICE OF ERROR IN THE DETERMINATION OF PATENT TERM ADJUSTMENT, FILED ON October 11, 2005 requesting that the Office adjust the PTA determination to 515-days.¹

The application for PTA is **GRANTED**. The Office will adjust the PTA calculation at the time of the issuance of the patent to reflect a determination of 515 days. The Office will *sua sponte* issue a certificate of correction. The Office will further adjust the PAIR calculation to reflect this decision.

Applicants assert that the Office erred in the PTA calculation. The Office provided four hundred and eighteen (418) days of administrative delay for the failure to initially act upon the application within 14 months of the filing date of the application. See 37 CFR 1.702(a)(1). Applicants agree with this determination. Applicants agree with the additional two hundred and thirty-two (232) days for the failure to issue the application within four months of the payment of the issue fee under 37 CFR 1.702(a)(4). Applicants also agree with the sixty-one day reduction pursuant to 37 CFR 1.704(c)(8).

Applicants dispute the twenty-one day reduction under 37 CFR 1.704(b) as well as the 11-day reduction under 37 CFR 1.704(c)(10). In addition, applicants out of good faith and candor point out that the Office failed to reduce the PTA determination for a submission of an amendment under 37 CFR 312 that was filed on August 20, 2004 and responded to by the Office on November 1, 2004. Applicants assert that this delay amounts to a 74-day reduction.

¹The Office is merging the two requests into this one decision. The first request is a timely request for additional PTA from a determination of 336 to a determination of 357 and the good faith and candor letter dated October 11, 2005 is a letter requesting that the PTA reduce PTA from a determination 557 days to a determination of 515 days. The Office notes that the first request was entered as a letter and not a PTA request and thus the Petitions Office was unaware of such request to determine PTA.

A review of the file reflects that applicants' arguments are persuasive. As to the three events which applicants dispute, the analysis by the appellants is correct. First, the 21-day reduction under 37 CFR 1.704(b) is inaccurate because applicants filed the response to the missing parts notice within the three-month period which is required to prevent PTA loss. In addition, the Office should not have assessed an 11-day reduction for the response to the notice of publication fees due. The notice of publication fee due was issued after the notice of allowance and Issue fee due and separately required the payment of the publication fee. The applicants should not be penalized in responding to such notice by paying the publication fee. In addition, the Office failed to enter the 312 amendment into PALM and therefore PTA was not reduced for the 312 submission. However, the amount of PTA reduction for the 312 submission is 74 days. Overall the correct amount of PTA at the time of the issuance of the patent is 515 days ($232 + 418 - 74 - 61 = 515$).

After the mailing of this decision, the Office will forward this patented file to the certificate of correction branch for an issuance of a certificate of correction.

The Office has assessed the \$200.00 fee. The letter states that applicants paid the fee by check. The Office does not see any fee recorded for this submission. The Office will assess the fee to deposit account 06-0916. If the Office did cash such check, the applicants are invited to request a refund. No additional fees are required in this deciding this application. No fees has been assessed for the letter which was a good faith and candor letter.

Any questions concerning this decision should be directed to Kery Fries, Senior Legal Advisor, Office of Patent Legal Administration, Office of Deputy Commissioner for Patent Examination Policy, at 571-272-7757.



Kery Fries
Senior Legal
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

cc: adjusted Pair calculation
DRAFT Cert. Of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,926,898 B2
DATED : Aug. 9, 2005
INVENTOR(S) : Rosen et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (557) days

Delete the phrase "by 557 days" and insert – by 515days--